

**OPINION
48-223**

March 4, 1948 (OPINION)

TAXATION

RE: Farm Property of Sectarin School

Re: Section 57-0208 (6), 1943 Revised Code

Your letter of March 2, 1948, asking for the opinion of the attorney general as to whether farm property owned by a sectarian school or academy, and used in part at least for the production of meat and milk for the students occupying the school's dormitories, is exempt from taxation, has come to my desk.

Your request involves the construction of section 57-0208 (6) of the 1943 Revised Code. This provision is as follows:

"All schoolhouses, academies, colleges, institutions of learning, with the books and furniture therein, and the grants attached to such buildings necessary for their proper occupancy, use, and enjoyment and not otherwise used with a view to profit, and all dormitories and boarding halls, including the land upon which they are situated, owned and managed by any religious corporation for educational or charitable purposes for the use of students in attendance upon any educational institution, if such dormitories and boarding halls shall not be managed or used for the purpose of making a profit over and above the cost of maintenance and operation;"

The question is: Does this provision exempt farm property used in the production of food for students living in dormitories maintained by the school from taxes?

Judge Cooley says of tax-exempt statutes:

"An intention on the part of the Legislature to grant an exemption from the taxing power of the state will never be implied from language which will admit of any other reasonable construction. Such an intention must be expressed in clear and unmistakable terms, or must appear by necessary implication from the language used, for it is a well-settled principle that, when a special privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt. In other words, since taxation is the rule and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is

doubtful or uncertain; and the burden of establishing it is upon him who claims it. * * *

Cooley on Taxation, Vol. 2, Fourth Edition, section 672, page 1403.

"If the primary use of property is secular, the fact that a portion is incidentally used for religious purposes will not make it exempt from taxation."

People ex re. v. Muldoon, 306 Ill. 234; 137 N.E. 863, 28 A.L.R. 857.

The statute here construed makes "all schoolhouses, academies, colleges, institutions of learning, with books and furniture therein," with certain real property as well as dormitories and boarding halls, exempt from taxation. Such exemption applies to property "owned and managed by any religious corporation for educational or charitable purposes for the use of students in attendance upon any educational institution." The real property, that is, land which is exempt is clearly the land upon which the buildings are located, together with the surrounding grounds "necessary for their proper occupancy, use, and enjoyment and not otherwise used with a view to profit."

Surely, farm land used to raise food for the students are not necessary for their proper occupancy, use, and enjoyment. This is further evident from the fact that such schools are often maintained entirely without such farm lands used as stated to raise food for students, and assuredly, such farm lands are used "with a view to profit," that is for a cheaper source of food than the ordinary markets afford.

It may be noted that the "grants" exempted are those necessary, etc., for use with the school building proper, and not those connected with the dormitories or boarding halls.

It is, therefore, our opinion that the farm lands, machinery, and other personal property used on and about them are not exempt from taxation under the provisions of section 57-0208, subsection 6, of the 1943 Revised Code. Therefore, such property is subject to assessment and taxation.

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Attorney General